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The protection of American lives...

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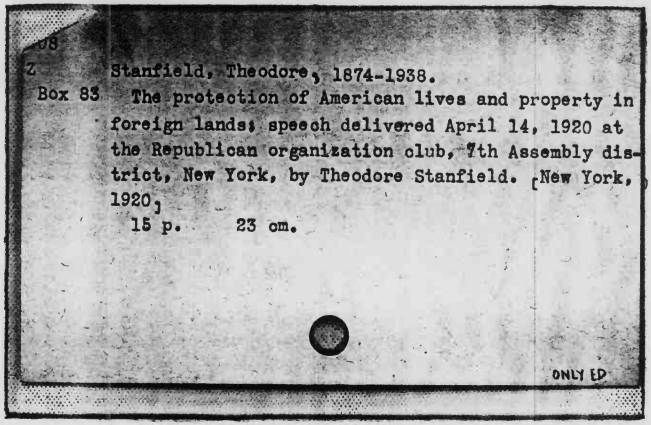
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THE PROTECTION OF AMERICAN LIVES AND PROPERTY IN FOREIGN LANDS

Speech Delivered April 14, 1920, at the Republican Organization Club, 7th Assembly District, New York

By

THEODORE STANFIELD

24 June 1920 Spd

Mr. Chairman, Ladies and Gentlemen:

At our last monthly meeting, the Chairman asked us to make suggestions for the Republican platform, in the coming Presidential camapign. We all recognize that one of the most important questions of the day is that of the protection of the lives and property of our citizens abroad. It is vital to our welfare. The great war was waged to make the world safe for democracy; a great political campaign must now be fought to make the world safe for Americans. It is particularly important, at this time, because the unvarying policy pursued by our Government, until the beginning of the Democratic administration in 1913, has been abandoned. It must be re-established. The war has made us pre-eminently a creditor nation, and has thus forced upon us an increased responsibility for the protection of our citizens in foreign lands.

Protection in fact is the essential point, not merely, the statement, of the principle of protection, in a platform. Until 1916, the platforms of both parties, have, frequently contained such planks, all of which proclaimed this principle. Since 1913, however, our settled rule of action has, in reality, been abandoned. The principle involved is not an open question with our people; it is a matter of Americanism. The issue confronting us, is the restoration of this principle as a rule of conduct, and its unflinching enforcement. I, therefore, submit the following, not only, as a platform plank, but also as a solemn pledge, which, the Republican party, and its presidential nominee, should give to the nation:

> "It was the unvarying policy of the United States of America until 1913 to enforce the protection of every citizen in all the rights secured to him by the Constitution, by treaties, and the laws of nations, at home and abroad, by land and by sea. The Republican party pledges itself to the re-establishment of this policy and to the unflinching maintenance of these rights."

I assert, without fear of contradiction, that this policy, has been consistently enforced until the advent of the Democratic administration in 1913. The proof is available on the highest authority. In a treatise issued October 5th, 1912, by the Department of State,

written by Joshua Ruben Clarke, then the Solicitor of the Department, entitled "The Right to Protect Citizens in Foreign Countries by Landing Forces," the statement is made, that, while our country, had up to that time, most rigidly adhered to the principle and practice of refraining from interferring in the purely political affairs of other countries, yet no nation, had with more frequency, used its military forces for the purpose of occupying temporarily part of foreign countries, in order to secure adequate safety and protection for its citizens and their property.

The various occasions on which this has been done are therein enumerated and the cases given and classified. I shall not weary you with a recital thereof; but, as the mere enumeration of these cases is impressive, I have had them tabulated in a copy prepared for your perusal. You will find that in over forty cases, American forces have been landed for non-political intervention, in order to protect American citizens, whenever a foreign country was either unable or unwilling to furnish protection. You will also find, in this copy, extracts from this official treatise, of the international law, and of our own law. They show that it is a well-established principle of international law, that one nation has the right to use force, if necessary for the protection of the lives and property of its citizens in another country, and that, the President of the United States has, under our Constitution, not only the right, but also the duty, to protect our citizens and their property in foreign lands. For this reason, it is necessary that the Republican party, to fulfill the proposed pledge, nominate and elect a President, who will perform this duty without faltering.

In 1912 the Democratic platform stated:

> "The constitutional rights of American citizens should protect them on our borders, and go with them throughout the world, and every American citizen residing or having property in any foreign country is entitled to and must be given the full protection of the United States Government, both for himself and his property."

On July 19, 1913, the Republican Senator from New Mexico, Mr. Fall, offered resolution No. 139 in the Senate asking, that the above statement of policy be formally adopted, and put into practice, by our government. The Republican Senators made strenuous efforts to have this Democratic platform plank so adopted, but the Democratic Senators prevented it. How can the Democratic party

reconcile this procedure with Mr. Wilson's pre-election statement in 1912: "Our platform is not molasses to catch flies. It means business. It means what it says. It is the utterance of earnest and honest men, who intend to do business along these lines, and who are not waiting to see whether they can catch voters with their promises, before they determine, whether they are going to act upon them or not."

Have our citizens been protected in Mexico, for example? Most certainly not. According to an official statement given on December 13, 1919, to the Senate Committee on Foreign Relations, it appears that since the Madero revolution in 1910, 551 Americans had been killed in Mexico and along the international border. 18 American women and children were on the death list, and 13 American men were listed as having been killed in their efforts to protect women. In connection with the deaths listed, eight American women were outraged. Just think of this! And today the popular Mexican sport is to capture American citizens and to hold them for ransom!

"Millions for defense; but not one cent for tribute" cried the fathers of our country in 1796, when our country was weak, and powerful France was the aggressor. "We want Perdicaris alive or Raisuli dead," thundered the immortal Roosevelt and his Secretary, Hay, in 1904. That, is the spirit which prevents injury from being piled on injury, and forestalls the necessity of going to war. On June 23, they cabled this to our Consul at Tangiers, Morocco. On June 24th Raisuli released Perdicaris. So speedily did even a brigand, apparently safe in the depths of Morocco, who was holding an American citizen for ransom, recognize the note of command in the voice from overseas. Respect and friendship are created by a firm and unflinching policy, and scorn, contempt and outrage follow a vacillating and cowardly one.

Nothing will prevent the murder of our citizens, and the loss of their property, and the necessity of a war to protect them, as will a firm and unflinching policy of actively protecting them when threatened. We know this, because England has proved it. She recognizes the same international laws that we do; but, she indulges in no verbal pyrotechnics. If an Englishman is threatened, Great Britain's representatives take an immediate, and active interest in his case. They determine to their own satisfaction, whether or not he requires protection. If so, immediate representations are made

to the government in question. If these are not heeded, the British Government threatens forcible, non-political intervention, and never fails to make good a threat. The result is that the Englishman abroad is the safest of all men. It is said, that, in Mexico, both the bandits and the Government are careful not to molest an Englishman.

The Democratic platform plank of 1916 states:

> "Intervention, implying, as it does, military subjugation is revolting to the people of the United States, notwithstanding that the provocation to that course has been great, and should be resorted to, if at all, only as a last resort. The stubborn resistance of the President and his advisors to every demand and suggestion to enter upon it is creditable alike to them and to the people in whose name he speaks."

The Democratic administration appears ignorant of the distinction, well established in international usage, between political and non-political intervention. The first is an intervention, designed to secure a change, or to protect from a change, a particular form of government or a dynasty. The second is an intervention having no political purpose whatsoever, being designed merely to protect citizens where the local government is either unable, or unwilling, to give such protection. In this case, internal policies of the affected government, are of no concern whatsoever to the interposing power, save as they affect the protection, and security of its citizens and their property.

Political intervention is indeed revolting to the people of the United States. That is one reason why they are dissatisfied with the present administration's intervention in Mexico. Non-political intervention, to protect its citizens, is the time-honored practice of all self-respecting nations. It was this procedure which Secretary of State Evarts had in mind, when in 1878 he wrote to our Minister to Mexico, at a time when that country was in a state of turmoil: "The first duty of a nation is to protect the life and property of its citizens. This is a paramount obligation, and that nation that fails or neglects to perform it, no longer deserves to be called a nation. It is immaterial to the United States how this protection shall be accomplished, whether by treaty, convention or military force. Protection in fact to American citizens is the point on which this Government is solicitous, and not the ways and methods in which that protection shall be accomplished."

Until the great war we were a debtor nation; now we are the largest creditor nation in the world. As we produce more than we consume, billions of dollars are already owing to us, and billions more will be sent abroad in the form of goods as well as of capital. Unless we resume our time-honored policy of protecting the lives and property of our citizens in foreign lands, we will not only incur the scorn and contempt of other nations and drift into war; but we will also hamper, if not prevent, our own commercial development.

Let it be the high privilege of the Republican party, to restore our American policy, and to thus regain the respect and friendship of all nations. Let us proclaim a platform which we will carry out. Let us elect a President who will obey the Constitution. Let us establish the permanent and unflinching protection of the lives and property of American citizens in foreign lands.

EXTRACTS

from treatise entitled

"RIGHT TO PROTECT CITIZENS IN FOREIGN COUNTRIES BY LANDING FORCES"

Written by the Solicitor of the Department of State
and issued by the Department
October 5, 1912
(Series M. No. 14)

Purposes for which forces have been landed may be roughly classified as follows:

Simple protection of American citizens located in disturbed areas:

China, 1854	Korea, 1888	Santo Domingo, 1903
Uruguay, 1855 & 1858	Navassa Island, 1891	Honduras, 1907
China, 1859	Chili, 1891	Nicaragua, 1910
Africa Kisembo, 1860	Hawaii, 1893	Honduras 1910 & 1911
Panama, 1860	Korea, 1894	
Japan, 1868	Nicaragua, 1899	
Uruguay, 1868	China, 1900	
Egypt, 1882		

Destruction of pirates infesting certain areas, whether nationals of the disturbed areas or otherwise:

Amelia Islands, 1811	Cuba, 1823	China, 1854

Punishment for insults or injuries to American citizens or American officers, such injuries not resulting in death:

Porto Rico, 1824	Nicaragua, 1854	China, 1856
Falkland Ils., 1831	Fiji Islands, 1855	Japan, 1863
Korea, 1871		

Punishment for murder of American citizens:

Sumatra, 1832	Fiji Islands, 1840	Samoa, 1840-1841
Formosa, 1867		

Re-establishment of American legation, collection of indemnities and protection of minister: Japan, 1864.

Suppression of local riots:
Hawaii, 1874, landing at instance of Government to restore order.
Egypt, Alexandria-1882, landing to restore order; extinguish fires, etc.

Preservation of order during interregnum between control of regular government and revolutionary government: Mexico, 1870.

Establishment of present regular government:
Samoa, 1899, joint action of United States and Great Britain.

Protection of Custom House at the instance of regular local officials: Uruguay, 1868.

Securing of indemnity:

Island of Johanna, 1851	Japan, 1864,	Haiti, 1888

Invasion of foreign territory for protection of American citizens and American territory: Spanish Floridas, 1817.

(pp. 31 & 32)

Landing of American Forces in times of Foreign Revolution:

(*a*) Without invitation of either faction:

This Government has repeatedly both alone and jointly with others landed forces in times of revolution in foreign countries, in order adequately to protect American interests. These landings were made as set forth below. Unless otherwise stated our attitude seems to have been neutral as between the contending factions.

China, 1854, the operations were conducted against the regular imperialist troops who had captured an American pilot boat in the harbor of Shanghai. 1855, Uruguay, operations against both factions. Africa Kisembo, 1860; Japan, 1868; Egypt, 1882; Korea, 1888; Chili, 1891; Hawaii, 1893; Nicaragua, 1899; China, 1903; Santo Domingo, 1903; Nicaragua, 1910; Honduras, 1911.

(*b*) At the instance of the regular local officials:

Panama, 1860	Uruguay, 1868	Hawaii, 1874

(*c*) Interference between two fighting factions, i.e., the revolutionists and the regular government. Uruguay, 1855, massacre of insurgents prevented; Samoa, 1899, one faction actively supported; Dominican Republic, 1904, a zone established in which no fighting permitted; Honduras, 1911, a zone established in which no fighting permitted; (see also Japan, 1864.)

Landing of American forces in time of war between two foreign nations: Korea, 1894; Honduras, 1907.

Operations of American forces landed on foreign soil for the protection of American interests:

(*a*) Forces merely landed and apparently undertake no hostile measures:

Uruguay, 1858	Hawaii, 1874	Korea, 1894
China, 1859	Mexico, 1876	Nicaragua, 1899
Africa, 1860	Korea, 1888	Santo Domingo, 1903
Panama, 1860	Novassa Islands, 1891	Honduras, 1907 & 1911
Japan, 1868	Chili, 1891	Nicaragua, 1910
Uruguay, 1868	Hawaii, 1893	

(*b*) Forces conduct belligerent operations Amelia Islands, 1801:

Cuba, 1823	Fiji Islands, 1855	Korea, 1871
Porto Rico, 1832	Uruguay, 1855	Samoa, 1899
Fiji Islands, 1840	China, 1856	China, 1900
Samoa, 1840 & 1841	Fiji Islands, 1858	
China, 1854	Formosa, 1867	
Nicaragua, 1854		

Use of Navy to Protect American Interests:

Japan, 1864, to open to navigation the Straits of Shimonoseki. Hawaii, 1888. Brazil, 1893, navy interfered to secure non-interference with neutral commerce by insurgents.

Ultimatum demanding satisfaction delivered before landing made: Porto Rico, 1824.

Island of Johanna, 1851, indemnity paid without landing forces. Nicaragua, 1854; Fiji Islands, 1858; Formosa, 1867; Korea, 1871.

American forces landed in co-operation with other forces for the protection of foreigners:

China, 1854, U. S. and Great Britain.
Uruguay, 1855, U. S. and Great Britain, France and Spain.
China, 1856, U. S. and Great Britain.
Uruguay, 1858, U. S. and other powers.
Africa, 1860, U. S. and Great Britain.
Panama, 1860, U. S. and Great Britain.
Japan, 1864, U. S. and Great Britain, France and Netherlands.
Japan, 1868, U. S. and Great Britain and France.
Uruguay, 1868, U. S. and other powers.
Samoa, 1899, U. S. and Great Britain.
Nicaragua, 1899, U. S. and Great Britain.
Honduras, 1911, U. S., Great Britain and Germany.

Display of Naval forces to secure protection of American citizens: Egypt, Palestine, Syria, Asia Minor, Jaffa, 1858. (p. 33)

THE PRESIDENT, AS THE CHIEF EXECUTIVE OF THE NATION CHARGED WITH THE RESPONSIBILITY OF CONDUCTING OUR FOREIGN INTERCOURSE, INCLUDING THE PROTECTION OF THE LIVES AND PROPERTY OF OUR CITIZENS ABROAD, HAS THE AUTHORITY TO USE THE FORCES OF THE UNITED STATES TO SECURE SUCH PROTECTION IN FOREIGN COUNTRIES.

It appears unnecessary to elaborate any argument going to show that the President as Chief Executive is, under the Constitution, primarily charged with the conduct of our foreign relations, including the protection of the lives and property of our citizens abroad, save in so far as the Constitution expressly vests a part of these functions in some other branch of government. (For example, the participation of the Senate in the making of treaties.)

The precedents already collected and classified above show that it has been the unbroken policy of the various Presidents of the United States so to interpret their powers, and that such interpretation has been accepted practically without serious question by the other branches of government. Certainly, beginning with the time of President Jefferson, and running on down to the present, the Executive has consistently, with the exception already noted as to President Buchanan, declared that it possessed the right to protect with the forces of the United States the life and property of American citizens.

President Jefferson in 1805, in discussing Spanish depredations on our territory, said:

"Considering that Congress alone is constitutionally invested with the power of changing our condition from peace to war, I have thought it my duty to await their authority for using forces in any degree which could be avoided. I have barely instructed the officers stationed in the neighborhood of the aggressions to protect our citizens from violence, to patrol within the borders actually delivered to us, and not to go out of them but when necessary to repel an inroad, or to rescue a citizen, or his property." (Moore, International Law Digest, vol. 7, p. 162.)

Later, Secretary of State Cass, writing to Lord Napier regarding a proposition for participation by the United States in certain hostilities against China, said:

"This proposition, looking to a participation by the United States in the existing hostilities against China, makes it proper to remind your lordship that, under the Constitution of the United States, the executive branch of this Government is not the war making power.

The exercise of that great attribute of sovereignty is vested in Congress, and the President has no authority to order aggressive hostilities to be undertaken.

"Our naval officers have the right—it is their duty, indeed, to employ the forces under their command, not only in self defense, but for the protection of the persons and property of our citizens when exposed to acts of lawless outrage, and this they have done both in China and elsewhere, and will do again when necessary. But military expeditions into the Chinese territory can not be undertaken without the authority of the National Legislature." (Moore, International Law Digest, vol. 7, p. 164.)

Still later, Mr. Cass, in writing to a Mr. Body, said:

"Cases may occur where the circumstances may justify the employment of our naval or military forces without special legislative provision, for the protection of our citizens from outrage, but it is not necessary to examine the extent or limit, of this right, because the principle is inapplicable in your case, where you demand a forcible interposition with the Nicaraguan Government, in order to give effect to the contract to which you refer." (Moore, International Law Digest vol. 7, p. 166.)

Recently, in a letter dated Jan. 30th, 1912, from the Secretary of State to Senator Stone, the following declaration was made:

"Neither does it seem to be any more open to question that the sending of the troops for the purposes mentioned lay in the discretion of the President, who, by reason of the inherent power lodged in him as chief executive of the nation, charged with the responsibility of conducting our foreign intercourse including the protection of the lives and property of our citizens abroad, has in many instances in the past used both the military and naval forces of the United States for the protection of American citizens. I think you will agree that it is inherent in the rights of the President, under the constitution, to direct troops or vessels to go wherever needed for the protection of such citizens and their interests and, as commander-in-chief of the army and navy of the United States, to exercise control over such expeditions after they have been inaugurated—in brief, to take all necessary measures short of those involving actual declaration of war."

In all of these cases the language shows that those making the declarations had clearly in mind the difference between making war, the authority for which they all understood rested solely in Congress, and protecting American citizens abroad, which action they regarded as not being war and the authority for accomplishing which they regarded as resting in the Executive.

(p. 38)

Query: Inasmuch as international law is declared to be a part of the law of the land, and inasmuch as one of the principles of international law is that one nation has the right to use force for the protection of the lives and property of its citizens in another country, has not the President, by virtue of his rights and duty to enforce the laws of the United States, the right to use the forces of the United States in the protection of the lives and property of citizens in foreign countries?

After quoting the opinions of judges of our Supreme Court and the Constitution, Section 3, Art. 2, which in its last clause but one provides: "He (the President) shall take care that the laws be faithfully executed." The solicitor concludes that the President may under constitutional powers and without the necessity of ancillary legislation, enforce those rules and principles of international law involved in the matter under discussion. He adds, however, that his observations upon this phase of the subject are made merely by way of suggestion and with no thought or pretense of more than a cursory consideration, and that it is entirely possible that a more detailed and careful study would lead to other or modified conclusions. (p. 40.)

INTERVENTION AND INTERPOSITION

In other words, the distinction must be drawn between an intervention designed to secure a change, or protect from change, a particular government or a dynasty, and an intervention having no political purpose whatsoever, being designed merely to protect citizens where the local government is either unable or unwilling to give such protection, the internal policies of the affected government being of no concern whatsoever to the interposing power, save as they affect the protection and security of its citizens and their property. (p. 23.)

There is no intervention either in the act of constraining by reprisals or force of arms a state to fulfill its international engagements or to repair an injustice or insult. The combined action of England, Spain and France against Mexico in 1861 had not at first the character of an intervention. It was a concerted understanding in order to obtain reparation for damages against the nationals of the three states and to insure the execution of engagements contracted with Mexico by the respective governments. But this action lost its primitive character when England and Spain retired from the Alliance. Napoleon tried to replace the empire by Maximillian of Austria. Intervention then was flagrant.

(p. 23.)

Quotation from Pradier-Fodere: To request—making an appeal to force—reparations, satisfactions for offences received or damages caused is not armed intervention; it is what Vattel describes as "that state in which one pursues his right by force."

(p. 26.)

To recommend its nationals to the authority of the country in which they have established their residence, to take up the defense of their interests in diplomatic notes, to demand reparation for prejudice to which they have been subject, etc., etc., is not to intervene; it is on the contrary to recognize the sovereignty of the state addressed. (Bonfils, Detroit International Public p. 160) (p. 24.)

Westlake says: Intervention in international affairs is justified in two classes of cases. The first, when the object is to put down a government which attacks the peace, external or internal, of foreign countries, or of which the conduct or avowed policy amounts to a standing threat of such an attack. The second is, when a country has fallen into such a condition of anarchy, misrule, as unavoidably to disturb the peace, external or internal, of its neighbors, whatever the conduct or policy of its government may be in that respect.

(p. 30.)

Thus secondly, The right of protection of its citizens abroad which a state holds, may cause an intervention by right, to which the other party is legally bound to submit.

(Oppenheim Int. Law. vol. 1, p. 183.)
(p. 6.)

On this point there may be appropriately quoted the language of the circuit court of Kansas in Hamilton vs. McLanghry. (1905, 136 Federal 445) in which Pollock district judge said: "It has been well said the safety of the people is the supreme law of the land. The first duty of a state is the protection of the lives and property of its citizens, wherever lawfully situated, by peaceful means if possible, if not, by force of arms. More especially must this protection be afforded the accredited representatives of this Government in a foreign country."

(p. 35.)

Calvo Int. Law, Section 110:

Calvo after summarizing the various views held by writers on international law and philosophers says: The conclusion that results from divers citations which we have made is that there exist almost as many different opinions as there are authors. Some admit and approve intervention; others condemn and repudiate it;

these make of it a right, those attach to it the idea of duty, others see only a simple act, a brutal act having its place in history, born of certain necessities and occurring under certain identical circumstances. Some expand, while others contract, the circle of causes which can justify or explain intervention, according to the needs of the doctrine which they support, according to the medium in which they move, the company to which they belong, the patriotic interest which they had to serve. Right or duty, no author furnishes us clear, irrefutable data on which one can base fixed and precise rules; it is not then in the writing of publicists that the guiding thread can be sought. The multiplicity of judgments which they present and the divergence which we notice among their opinions sufficiently demonstrates the difficulty which the purely theoretical side of the law of intervention offers. Accordingly to our opinion one can hope to resolve the question in an entirely satisfactory manner only by placing oneself on the ground of practice, which alone leads to recognizing, that if occasionally interventions originate from egotistical calculations or erroneous interpretations of conventional engagements, there are cases of interposition which rest upon the exercise of an incontestable right and the tendency and appreciation of which are logically and necessarily in accord with true international principles. This view is fully confirmed by the study of the most important cases of intervention presented by history, especially in the times which are near our own.

(p. 8.)

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